

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35375

|                       |   |                                  |
|-----------------------|---|----------------------------------|
| STATE OF IDAHO,       | ) | 2009 Unpublished Opinion No. 420 |
|                       | ) |                                  |
| Plaintiff-Respondent, | ) | Filed: April 8, 2009             |
|                       | ) |                                  |
| v.                    | ) | Stephen W. Kenyon, Clerk         |
|                       | ) |                                  |
| MICHAEL A. McDONALD,  | ) | THIS IS AN UNPUBLISHED           |
|                       | ) | OPINION AND SHALL NOT            |
| Defendant-Appellant.  | ) | BE CITED AS AUTHORITY            |
|                       | ) |                                  |

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Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge.

Order revoking probation and ordering into execution previously imposed sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Mark W. Olson, Deputy Attorney General, Boise, for respondent.

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Before, PERRY, Judge, GUTIERREZ, Judge  
and GRATTON, Judge

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PER CURIAM

Michael A. McDonald, a convicted felon, was charged with unlawful possession of a firearm with a persistent violator enhancement and pursuant to a plea agreement, pled guilty to the firearm charge and the state dismissed the enhancement. McDonald was sentenced to a unified term of five years, with one year determinate, and the district court retained jurisdiction. After McDonald completed his rider, the district court suspended his sentence and placed him on probation for four years. McDonald subsequently violated the terms of his probation and the district court revoked his probation and ordered the previously imposed sentence into execution. McDonald appeals, contending that the district court abused its discretion by revoking his probation and by failing to reduce his sentence.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation, a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 326, 834 P.2d at 328.

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion either in revoking probation or in failing to reduce the sentence. Therefore, the order revoking probation and directing execution of McDonald's previously suspended sentence is affirmed.